

### REMARKS

The Applicant does not believe that examination of the foregoing amendment will result in the introduction of new matter into the present application for invention. Therefore, the Applicant, respectfully, requests that the above amendment be entered in and that the claims to the present application, kindly, be reconsidered.

The Office Action dated October 6, 2004 has been received and considered by the Applicants. Claims 13-18 are pending in the present application for invention. Claims 13-18 are rejected by the October 6, 2004 Office Action. Dependent Claims 19-30 have been added by the forgoing amendment, resulting in less than 20 claims and no new independent claims. Therefore, no fee for addition claims is required.

The Office Action rejects Claims 13-18 under the provisions of 35 U.S.C. §102(b) as being anticipated by EP000584991A2 issued to Nitta et al. (hereinafter referred to as Nitta et al.). The Examiner in making this rejection states that Nitta et al. disclose a video recording apparatus that shows all the limitations recited in Claim 13, including the feature of encoding a video program into a compressed digital data with a variable bit rate, the feature of controller for adjusting during the encoding the bit rate depending on a remaining part of the data space and on a remaining part of the duration of the program and the complexity of at least a part of the program determined during the encoding as specified in the present Claim 13. The Examiner further states that Figure 1, as well as components 1, and 11-13 of Nitta et al. show the encoding process taught therein is adjusted based remaining part of the memory space of the disk, the duration of the program, and the complexity of the program.

The Applicant, respectfully, disagrees. Rejected Claim 13 defines the feature of controller for adjusting during the encoding the bit rate depending the complexity of at least a part of the program determined during the encoding. Nitta et al. do no disclose, or suggest, using complexity of part of the program for adjusting the bit rate. Nitta et al. takes into account the "quality" of the picture, however, quality of the resulting pictures is not equivalent to the complexity of part of the program (see col. 6, lines 3-18). Moreover, the "quality" of the resulting pictures that is employed by Nitta et al. is not done during encoding, as recited by rejected Claim 13, as well as the remaining rejected claims. The Applicant has reviewed Nitta et al. in its' entirety and there is no disclosure,

or suggestion, for using complexity of part of the program for adjusting during the encoding the bit rate of the digital data. Therefore, this rejection is, respectfully, traversed.

The rejection to Claims 14-18 is the same as that of rejected Claim 13, therefore, the same arguments previously discussed pertains to the patentability of Claims 14-18. Therefore, these rejections are also, respectfully, traversed.

New Claims 19-30 define subject matter that elaborates on the feature of the complexity of the program part being used for adjusting during the encoding the bit rate of the digital data. As previously discussed, Nitta et al. do not disclose, or suggest, using complexity of part of the program for adjusting during the encoding the bit rate of the digital data. Accordingly, the subject matter defined by new Claims 19-30 should be allowable over the cited reference Nitta et al. The subject matter of new Claims 19-30 is fully detailed in the specification to the present invention as originally filed on page 5, lines 5-24. Therefore, entry of these claims will not result in the introduction of new matter into the present application for invention.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

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